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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1931.

No. 826.

ED SPEOLES ET AL, *Appellants*,

vs.

T. BINFORD ET AL, *Appellees*.

BRIEF AND ARGUMENT

In Behalf of

W. T. STEVENS, INTERVENING COMPLAINANT BELOW, Appellant.

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INDEX OF CONTENTS.

	Page
Preliminary Statement	1
Statement of the Issue	2
Statute under Attack	2
Compression of Cotton	3
Summary of Argument	6
Issue upon Which Decision Rests	6
Point	7
While Purporting to "Regulate"—the Act Prohibits Hauling Cotton Over the Roads	8
The Act Compels Cotton to be Compressed in the Interior and Shipped to Market by Rail	9
Valid Basis of Classification	10
Equality Before the Law	11
Arbitrary Selection is not Classification	11
General Laws of State	15
Foolish Results of Law	15
Florida Statute Construed	18
Conclusion	20

INDEX OF CASES CITED.

STYLE OF CASE.

Air-Way Electric Appliance Corp. v. Day, 266 U. S. 71	11
Bailey v. Drexel, 259 U. S. 20	9
Barbier v. Connolly, 113 U. S. 27, 28 L. Ed. 923	13
Brimmer v. Rebman, 138 U. S. 78	9
Cotting v. A. A. Godard, 183 U. S. 79, 46 L. Ed. 92	14
F. S. Royster Guano Co. v. Virginia, 253 U. S. 412	11
Frost v. R. R. Corp. Com., 278 U. S. 515	9, 11
G. C. & S. F. R'y. Co. v. Ellis, 165 U. S. 150, 41 L. Ed. 666	11, 12, 13
Chy Lung v. Freeman, 92 U. S. 275	9
Henderson v. Wickham, 92 U. S. 259	9

	Page
Leeper v. Texas, 139 U. S. 462	13
Liggett v. Baldrige, 278 U. S. 105, 73 L. Ed. 204	12
Lochner v. N. Y., 198 U. S. 45	9
Louisville Gas & E. Co. v. Coleman, 72 L. Ed. 770	12
McLeaish v. Binford, 52 Fed. Rep. (2d) 151	19
Meyer v. Nebraska, 262 U. S. 390	9
Real Silk Hosiery Mills v. Portland, 268 U. S. 325	9
Schlesinger v. Wisconsin, 270 U. S. 230, 43 A. L. R. 1224	11
Smith v. Cahoon, 283 U. S. 553, 75 L. Ed. 1264	18
Smith v. St. Louis & S. W. R'y. Co., 181 U. S. 248	9
State of Minnesota v. Barber, 136 U. S. 313	9

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PRELIMINARY STATEMENT.

The intervention of W. T. Stevens, while adopting the material allegations made by the original complainant, Ed Sproles, is addressed particularly to only one Section of the Act under attack.

In connection with intervenor Stevens' contention on this appeal, Point IV. was designated, which deals entirely

*Indications of emphasis in this brief are ours unless otherwise indicated.

with this one section of the Act, while the other seven points on which the appeal is predicated relate to other sections of the Act under attack. All appellants, other than intervenor Stevens, have filed briefs in this cause covering the contentions made as respects the invalidity of certain sections of the Act, other than the Section involved here. In the positions therein taken, we fully concur, but the purpose of this brief is to present to the court the position of intervenor Stevens as to the unconstitutionality of the particular section of the Act at which his intervention is aimed.

STATEMENT OF THE ISSUE.

This intervention involves the validity of Section 3 (f) of the Act under attack. Complaint is made that this section violates the equal protection clause and the due process clause of the 14th Amendment. This Section 3 (f) reads as follows:

> "Immediately upon the taking effect of this Act, it shall thereafter be unlawful for any person to operate or move, or for any owner to cause to be operated or moved, any motor vehicle or combination thereof over the highways of this State which shall have as a load or as a part of the load thereon any product, commodity, goods, wares or merchandise *which is contained, boxed or bound in any container, box or binding containing more than thirty (30) cubic feet and weighing more than five hundred pounds where there are more than fourteen (14) of such containers, boxes or bindings, being carried as a load on any such vehicle or combination thereof;* provided, that no number of any such containers, boxes or bindings shall be carried as the whole or part of any load exceeding seven thousand (7000) pounds on any such vehicle or combination thereof."

It is not denied by appellees that uncompressed cotton was made the target of this section of the Act, although

the Legislature chose to describe this commodity rather than to label it by its customary name. The court found as a fact that the customary and usual square bale of *uncompressed* cotton is of greater size than thirty cubic feet, while every square bale of *compressed* cotton is less than thirty cubic feet in size; that the weight of the average and usual bale of cotton—be it compressed or uncompressed—is approximately five hundred pounds or more. The court further found as a fact that *there is no commodity generally and commonly transported over the highways of the State of Texas fitting and conforming to the description: "contained, boxed or bound in any container, box or binding, containing more than thirty cubic feet and weighing more than five hundred pounds", other than square bales of uncompressed cotton.* (Record p. 132)

When cotton is harvested in the fields it is transported to local gins where the seed is removed and the lint is pressed into what are known as "flat" or "uncompressed" bales. The cotton is pressed in a press box 27 by 54 inches by 114 inches. The record shows that the average bales will run from 53 to 56 inches in length and from 36 to 45 inches in width with a thickness of from 26 to 28 inches. (Record pages 251-252, 267)

The bales are wrapped in bagging or burlap containers bound together with bands or ties. The average weight of the bales will usually run slightly in excess of 500 pounds and they will almost without exception contain more than 30 cubic feet to the bale. (Record p. 132)

The general movement of cotton from the interior of Texas is to the ports where the greater portion of it is trans-shipped by steamer to all parts of the world. Prior to the advent of motor transportation over the highways practically the entire crop of Texas cotton moved to the ports by railroad. In order to get a heavier loading of the commodity in railroad box cars the practice developed many years ago of assembling the cotton at various in-

terior railroad points where the cotton is further compressed to a density of approximately 22 to 24 pounds per cubic foot. Bales compressed to this density were known as "standard compressed" bales and the term has usually been used to distinguish between the uncompressed bales on the one hand and the so-called "high density" compressed bales on the other hand. "High density" bales are the result of a compression similar to that used in producing standard density bales except that the density runs approximately 32 to 34 pounds to the cubic foot.

The interior compresses are usually what are known as standard compresses and produce the "standard compressed" bale which have the same width and length as the uncompressed bales which come from the gins but are compressed to less thickness so that instead of being about 42 inches thick they will range from 21 to 28 inches thick. The railroads for many years followed the practice of granting lower freight rates on the "standard compressed" bales of cotton than applied on the "flat" or "uncompressed" cotton; and in other instances the railroads would stop the cotton in transit at the compresses (with the consent of the shipper) and have it compressed to standard density at the cost and expense of the railroad in order to obtain heavier loading from the compress point in the interior to the port and thereby conserve equipment.

At the ports cotton is compressed to "high density" in order to obtain the benefit of cheaper ocean rates. Either a flat bale or a standard compressed bale may be compressed to high density by the same operation. In this brief the term "flat cotton" and the term "uncompressed cotton" will refer to the gin bales such as those above described and "compressed cotton" or "standard compressed cotton" will refer to the bales which have been further compressed as hereinabove described.

The only purpose of compressing cotton is to obtain more favorable freight rates as the fact of compression

adds no value to the commodity. The saving of transportation charges on compressed cotton brought about the establishment of standard compresses at the principal interior railroad junctions in the State of Texas and these compresses have for many years existed as an adjunct to transportation of cotton by railroad. When improved highways were constructed and highway motor transportation developed a more economical means of handling cotton was available because of the fact that it was not necessary to compress the bales of cotton in order to transport them on the trucks. The saving in cost resulting from the omission of the service of compressing the bales of cotton to standard density made it possible for the trucks to compete successfully in the transportation of the commodity.

The Three-Judge Court, upon hearing the matter on application for temporary injunction, granted intervenor Stevens the relief sought and held the section under attack unlawfully discriminatory against, and oppressive of, persons engaged in the transportation of uncompressed cotton. (Record pp. 113 and 116)

Subsequent to the date of this decision, and on January 1, 1932, Section 5 of the Act went into effect. Upon final hearing the Court held Section 5 valid, and at the same time dissolved the temporary injunction theretofore granted intervenor Stevens on the ground that the discrimination that existed in Section 3 (f) had been eliminated through the taking effect of Section 5. In this same opinion the Court held also that Section 7 (5 b) permitting, under the conditions named in said section, the transportation of 14,000 pounds as a load, referred as well to such commodities as fell within the inhibitions of Section 3 (f), including uncompressed cotton. (Record p. 121) This holding seems to place motor transportation of bales of uncompressed cotton on an equal basis with other articles of commerce, *provided* Section 5 of said Act is valid and constitutional.

SUMMARY OF ARGUMENT.

We bottom our contention, that this Section 3(f) of the Act is invalid upon its bald attempt to prohibit hauling over the public highways on one truck fifteen or more bales of cotton *any one of which bales* has not had a second compression—while leaving unaffected a like load of fifteen or more bales of cotton that are exactly like the "flat" or "uncompressed" bales—*differing only as to thickness of the bales.*

The necessary effect and result of this Section of the Act is to require that before cotton can be moved to market, it be given a *second compression,* of no benefit to the cotton, of no value to its owner, and in no way related to its transportation over the highways. This requirement causes great unnecessary expense and delay to farmers and cotton merchants and is a mere "sham" to favor interior compresses and the railroads.

There is no question here involved about the power of the State to regulate the use of its highways. Its full right is here conceded to prescribe any and all sorts of measures *really regulating its highways,* however unwise and inexpedient they may be.

But the State Legislature may not use the mere pretext of regulation arbitrarily or unjustly to discriminate between objects of legislation that are similarly circumstanced with respect to the things dealt with. No substantially greater burdens may be laid upon one thing than are laid upon others in the same situation with reference to the subject regulated.

The principles seem tolerably well established—the line fairly well marked. The question is: Upon which side of the line does this case fall?

Does this Act manifest an effort of the State Legislature to regulate the use of its highways in a way that is reasonably related to their preservation or to the safety of persons traveling over them?

On does the Act present the *mere form* of regulating highway use while in *substance* it clearly interferes unjustly with private business, and imposes material burdens upon a small part of a comprehensive class with reference to rights and burdens that pertain in substantially the same manner to all of the class?

POINT.

(Being Point IV. designated in connection with the appeal of this intervention.)

Subdivision (f) of Section 3 of said Act creates a classification which is unreasonable, arbitrary and discriminatory and without any substantial relation to the purposes of the Act, thus violating the equal protection and due process clauses contained in the Fourteenth Amendment to the Constitution of the United States:

(a) In making a distinction between commodities which are boxed or bound in containers or binders and those not so boxed or bound; and

(b) In making a distinction between commodities which are boxed or bound in bales or packages of thirty cubic feet or more in bulk and weighing more than five hundred (500) pounds and those boxed or bound in bales or packages of less bulk and weight.

This brings us to a consideration of the single proposition urged herein by intervenor Stevens, namely, that if Section 5 is held invalid by this Court, Section 3 (f) is then likewise invalid for the reason that this Section, without the support of Section 5, is discriminatory and arbitrary and violative of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

In its fifteenth finding, the Court below stated:

> "That the limitation of the load to fourteen packages, boxes, barrels, or bales, of dimensions exceeding

thirty cubic feet and weighing more than 500 pounds, as is prescribed by Section 3 (f) of House Bill 336, is a reasonable classification related to the safe transportation of said boxes, bundles, bales, et cetera, over the highways in motor vehicles when construed and considered in connection with the provisions of Section 5 of said House Bill 336. That *when said Section 3 (f) is construed and considered independently of the provision of said Section 5, said Section 3 (f) has no just relation to the supposed mischiefs to be remedied and is unreasonable and is unlawfully discriminatory against and oppressive to intervenor W. T. Stevens.*" (Record p. 133)

In its conclusions of law, being No. XXXIX, the Court below held:

> "We conclude that Section 3 (f) of the Act, limiting the number of containers in a load which may be transported over the highways is valid *when construed in connection with Section 5 of the Act.*" (Record p. 140)

The right of the State to regulate the use of its highways is conceded. Its power to prescribe measures that *in fact regulate the use of its highways,* however unwise and impracticable they may be, is recognized. But the Legislature cannot enact laws that bring about an unjust discrimination. Under the pretext of highway regulation, it cannot arbitrarily interfere with lawful business and prohibit use of public highways to a part of the public whose use thereof is altogether lawful.

The Act in question, while passed under the *guise* of "regulating the use of the highways," *is in fact regulation of the business of hauling uncompressed cotton* by motor vehicles over the highways with the result that it prohibits owners of trucks from, under reasonable regulation, hauling cotton to market, *compressed or uncompressed as they may desire, while it leaves the highways open to haulers of all other commodities.*

In passing upon these matters our Courts have uniformly looked through the *mere shadow or form*, and reached the real *substance*. Whatever declarations of public policy may accompany a legislative act, if its real and true purpose is to impose harsh discriminations and oppression on a business using public roads—then such Act must fall. State of Minnesota v. Barber, 136 U. S. 313; Brimmer v. Rebman, 138 U. S. 78; Real Silk Hosiery v. Portland, 268 U. S. 325.

However euphonious may be the terms employed in preambles, this Court will tear aside the mask of "regulating highway use" that, whether intentionally or not, hides the real object and purpose, as well as the necessary results, of this Act, and thereby having sight of the real and naked viciousness of the measure, will enjoin its enforcement, and thereby destroy its potentiality for wrong. Smith v. R'y. Co., 181 U. S. 248; Lochner v. N. Y., 198 U. S. 45; Bailey v. Drexel, 259 U. S. 20; Meyer v. Nebraska, 262 U. S. 390; Henderson v. Wickham, 92 U. S. 259; Chy Lung v. Freeman, 92 U. S. 275; Frost v. R. R. Com. Co., 271 U. S. 515.

The Act in question on its face seems clearly to be an interference with the right to contract and to carry on private business to which the public safety on the highways is in no way related. And whatever of the true character of the Act is not plainly disclosed by its very terms, is readily exposed and brought to view by facts found by the Court below.

It is patent from the face of the statute in question that its only purpose, its only effect, and its only result, is to favor and prefer interior compresses and the railroads. It is plain and clear from the *face of the statute* that its pretended regulation of motor trucks is a mere guise. Surely the Court will look through the *shadow* and find its *substance*.

Considering its necessary effects and results, it appears

perfectly plain and clear that the statute in question falls within the constitutional inhibition against depriving complainants of their property without due process of law, and denying to complainants the equal protection of the laws—as guaranteed by the 14th Amendment.

* * *

Those attempting to sustain the Section under attack, make frequent reference to the right of the State to "classify" the objects of legislation. Assuming, *arguendo,* that *cotton* has peculiar characteristics, properties or qualities that make its transportation over the highways more injurious or destructive of the highways or more hazardous or dangerous to the public upon the highways than vehicles carrying loads of other commodities alike in weight, width, height and length, so that cotton might be singled out and legislated upon—still the Act in question bears no relation to such peculiar characteristics making *"flat"* or *"uncompressed"* cotton the proper subject of such class legislation. Nor does the Act bear reasonable relation to the conservation of the road or to the safety of the public upon the highways.

There undoubtedly exists the well recognized right of law-making bodies to "classify" the subject matter of their enactments. And in this "classification" of objects of legislation, the law-making body has considerable discretion. The guide or "yard stick" by which different objects of legislation are measured and in the light of which they are considered, need not be precisely those which the Court would use in each case.

But the objects upon which the law operates—the subject matter of the Act—must amount to dealing with persons, places or things legislated about, *as a class.* A mere singling out of one, or a few, of such persons places or things *from a class* to which they properly belong FOR THE PURPOSES OF THE PARTICULAR ENACTMENT, is no "classification" at all, but is a mere pointing out or designation.

Under the equal protection clause of the 14th Amendment to the United States Constitution, our Courts have always held that the mere arbitrary *pointing out* or *designation* of a thing or subject matter for legislation is not sufficient to make it a class, but that there must be some peculiar properties, characteristics or attributes of the subject matter so as to furnish a reasonable basis for its classification, and that these peculiar characteristics, properties or attributes must bear some reasonable and logical relation to the legislation in question.

This was recognized and well stated in case of G. C. & S. F. Ry. Co. v. Ellis, 165 U. S. 150, opinion by Mr. Justice Brewer,

> "* * * *It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the 14th amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.*"

Since the above case was decided, the Supreme Court of the United States has frequently made the same pronouncement and adopted the same canons of construction therein enunciated.

This Court said in the case of Frost v. Corporation Commission, 278 U. S. 515:

> "*The classification, in order to be valid, must rest upon some ground or difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced must be treated alike.* F. S. Royster Guano Co. v. Virginia, 253 U. S. 412; Air-Way Elec. Appliance Corp. v. Day, 266 U. S. 71; Schlesinger v. Wisconsin, 270 U. S. 230, 43 A. L. R. 1224. *That is to say mere difference is not enough; the attempted classification must always rest upon*

some difference which bears a reasonable and just relation to the Act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis. G. C. & S. F. Ry. Co. v. Ellis, 165 U. S. 150; Louisville Gas & E. Co. v. Coleman, 72 L. Ed. 770."

The late case of Liggett Co. v. Baldrige, 278 U. S. 105, 73 L. Ed. 204 (opinion by Mr. Justice Sutherland), is also squarely in point. The Court in deciding that case said:

> "It therefore will be seen that without violating laws, the validity of which is conceded, the owner of a drug store, whether a registered pharmacist or not, cannot purchase or dispense impure or inferior medicines; he cannot unless he be a licensed physician prescribe for the sick; * * * so it would seem, every point at which the public health is likely to be injuriously affected by the act of the owner in buying, compounding or selling drugs and medicines is amply safeguarded.
>
> "The Act under review does not deal with any of the things covered by the prior statutes above enumerated. It deals in terms only with ownership. It plainly forbids the exercise of an ordinary property right and, *on its face, denies what the Constitution guarantees. A State cannot, 'under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them.'* (Citing numerous cases.)
>
> "In the light of the various requirements of the Pennsylvania statutes, it is made clear, if it were otherwise doubtful, that mere stock ownership in a corporation owning and operating a drug store, can have no real or substantial relation to the public health; and that the Act in question creates an unreasonable and unnecessary restriction upon private business."

Due process and equal protection of the laws are secured by laws operating upon all alike, and not subjecting

any place, thing or commodity to the arbitrary exercise of the legislative power, unrestrained by the established principles of natural and distributive justice. The lawmaking powers of the State must be exerted within the limits of these principles and its exertion cannot be sustained when *special, partial or arbitrary.* This conception of the generality and equality of the law as a necessary part of due process and equal protection of the laws, is indeed the greatest contribution which America has made to the body of the law. See Leeper v. Texas, 139 U. S. 462.

If the State Legislature in enacting laws arbitrarily or unjustly discriminates between persons or commodities that are similarly conditioned with reference to the things legislated upon, then the organic provisions securing property rights are violated. No greater burdens may be laid upon one thing than are laid upon others in the same situation with respect to the subject legislated upon. See Barbier v. Connolly, 113 U. S. 27, 28 L. Ed. 923.

It is true that a number of Legislative Acts have been sustained where the objects of such legislation were *classified.* They have been upheld in such instances upon the theory that the *objects of the legislation furnished a valid basis of classification.* But under the decisions where there appears to be no just basis for a classification adopted, and the enactments impose a material burden upon a part only of a comprehensive class with reference to rights and burdens that pertain in substantially the same manner to all of the class, the classification is not in accord with the requirements of the constitution as to due process of law, and the equal protection of the laws. See G. C. & S. F. Ry. v. Ellis, 165 U. S. 150, 41 L. Ed. 666.

All of the text writers and all of the adjudicated cases touching upon this subject indicate that the objects of a law applying to a part or to a few only, must have characteristics so distinct from all others (to which the law does not apply) as reasonably to form, for the purpose

legislated upon, a class by itself—in order to relieve such a law from offending against the constitutional guaranties. In other words, the law must operate upon persons, places, things, et cetera, *as a class;* the class must be so constituted and described as that persons, places or things may fall within or without the class as the case may be. To put the matter another way—there must be *a real valid reasonable basis of classification*—there must not be *a mere designation.*

In this statute there is a *mere semblance* of classification, but really there is a *singling out of only one commodity,* and that in *a particular size package.* There is no other commodity to fall within the pretended class. *Arbitrary selection can never be justified by calling it "classification."* The classification must be one which is based upon some difference which bears a proper relation to the subject matter of the Act and the supposed mischief to be remedied. See Cotting v. Godard, 183 U. S. 79, 46 Law Ed. 92, and cases there cited.

* * *

The Act unjustly and unreasonably discriminates against owners of trucks hauling *uncompressed* cotton and in favor of owners of trucks hauling *compressed* cotton; and further discriminates against haulers of cotton where there is no *compress in the vicinity,* and where there is *no compress between such points and market,* on the one hand—and haulers of cotton from points *in the vicinity of compress plants* on the other hand.

Merely reading the Section assailed leaves no doubt as to its purpose and intent. And if doubts remain, they are once removed by the findings of the Court below.

The general laws of the State regulate all motor vehicles, in a comprehensive way, fixing limits of speed, license et cetera as well as weight, height, width and length of load et cetera. It is undisputed that Intervenor Stevens had proper license to operate his truck over the roads and

had complied in all respects with the general rules and regulations governing the operation of trucks over the highway.

Bearing in mind that the provision under attack is directed at the transportation of *uncompressed cotton*—that a bale of *uncompressed* cotton is over thirty cubic feet in size and that a bale of compressed cotton is less than thirty cubic feet in size; that generally these bales of cotton be they *compressed* or *uncompressed*—weight slightly over five hundred pounds, let us take a few of the many illustrations that can be drawn to see whether there is any reasonable basis for this attempted classification,—whether the same bears any relation to the preservation of the public highways or to the safety of the traveling public.

A, B, C, D and E are contract carriers and each is the owner of a six-wheel motor truck of exactly the same type, the bed and body of such trucks being identical. Each is engaged in the transportation of commodities over the highways of the State of Texas. The general regulatory laws of the State of Texas permit each of them to carry on that character of vehicle a load of 30,000 pounds gross weight (including the vehicle) *except when the articles constituting the load transported are more than 30 cubic feet in size and more than 500 pounds in weight, and then they are restricted to a net load of 7,000 pounds.* Under the 30,000 gross weight law a load of 24,500 pounds net is permitted in that a vehicle weighs approximately 5,500 pounds. Let us suppose that these several carriers start out upon the highways of the State of Texas in unison:

Carrier A has a net load of 7,001 pounds, consisting of various kinds of dry goods and *one bale of uncompressed cotton.*

Carrier B has a net load of 24,000 pounds, consisting of *nitroglycerin, several boxes of matches and a number of cans of gasoline,* the boxes, cans and containers each being less than 30 cubic feet in size and each weighing less than 500 pounds.

Carrier C has a net load of 24,000 pounds, consisting entirely of *compressed cotton,* some 40 to 45 bales in number.

Carrier D has a net load of between 10,000 and 11,000 pounds consisting entirely of bales of *uncompressed cotton,* some 20 bales in number.

Carrier E has a net load of 24,000 pounds consisting of 20 bales of *compressed cotton* weighing between 10,000 and 11,000 pounds, and the remainder of the load consisting of such materials as *nitroglycerin, matches, dynamite, gasoline and other highly inflammable goods.*

Now applying the provision of Section 3 (f) of the Act under attack, what do we find?

Carrier A has violated the law, *notwithstanding the fact that his load above described is carefully loaded, well distributed and thoroughly secured*—but he has *one bale of uncompressed cotton* on his load,—a bale that is a destroyer of the highway and a peril to the traveling public!

Carrier B is *within the law, notwithstanding the innately dangerous commodities he hauls and irrespective of how they may be loaded,*—how apparently "spillable" the load may be and what attendant dangers such transportation might have. Though his load is 24,000 pounds in net weight, it does not cause a destruction of the highways because in the entire load there is not to be found a single bale of uncompressed cotton!

Carrier C is likewise *within the law, though his load consists of 40 to 45 bales of compressed cotton, each but little less in size than the lonesome bale of uncompressed cotton which Carrier A has, and though his bales may be stacked three times as high* or as wide as is the load hauled by Carrier A and irrespective of how his load may be bound or secured to the truck or distributed over the bed, but Carrier C is hauling *compressed cotton* and his 24,000 pounds of net weight and his tall, wide bunglesome poorly secured load is not going to destroy the highways or en-

endanger the lives of the traveling public because forsooth he hauls *compressed* cotton!

Carrying the illustration a bit further—let us attempt to improve upon Carrier C's dangerous, bunglesome and insecure load by removing 20 of the bales of *compressed cotton he has loosely loaded thereon* and substitute in the place of said 20 bales *one bale of uncompressed cotton,* and what have we? Despite the fact that the load per wheel has been decreased and of necessity the highway surface helped, and though you may have made the highway safer for the traveling public by curing the evil of a tall load or a wide load of unfastened bales of cotton—strange as it seems, you have converted Carrier C's load from a *lawful* one to an *illegal* one!

Because of the 7,000 pound restriction, the carrier of *uncompressed cotton* cannot haul more than 13 in number per load. In some unusual and rare instances, when one or two small bales might be a part of his load, he could transport 14 of such bales. Carrier D, whose situation is in every respect identical with that of A, B, and C, transports solely *uncompressed* cotton. He has a load of 20 bales of cotton weighing some 10,000 pounds on his six-wheel vehicle, properly proportioned and distributed, well chained and secured to the truck, yet he falls within the inhibition of this Act, notwithstanding Carrier C is permitted to operate his truck with his 40 bales of *compressed* cotton, stacked twice as high as (or much wider than) Carrier D's, and with his load not nearly so carefully secured, distributed, et cetera. There are twice as many containers to spill and topple over and twice as much weight to be borne by the highways through the operation of C's load than there is in the operation of D's load, but we are led to believe that the operation of D's truck will nevertheless injure the highways to a greater extent and endanger the lives of the public in a larger measure than will the operation of C's truck.

Carrier E, with his load of 20 bales of compressed cotton weighing some 10,000 pounds and carrying thereon in addition some 13,000 to 14,000 pounds of highly inflammable materials, is allowed to proceed along the highways with perfect impunity, and this though his load be twice as dangerous as D's and occasions twice as much destruction to the highways. But, of course, Carrier E patronized an interior compress before beginning the transportation of his commodities.

Can it be said in the face of the aforementioned obvious situations brought about through the provisions of this Act, that the attempted classification "rests upon some difference which bears a reasonable and just relation to the Act in respect to which the classification is proposed,"—that it has not been "made arbitrarily and without any such basis,"—"that it is based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection."

It is at once apparent that the provision has no relation either to the preservation of the highways or to the safety of the public. It is a plain attempt under the guise of protecting the public, arbitrarily to interfere with private business and prohibit lawful occupations, and to impose unreasonable and unnecessary restrictions upon the business of hauling one's cotton to market, and upon the persons engaged therein.

In the case of Smith v. Cahoon, 283 U. S. 553, this Court said:

> "The principle that the State has a broad discretion in classification in the exercise of its power of regulation is constantly recognized by the decisions of this Court (citing a number of authorities). But the constitutional guaranty of equal protection of the laws is interposed against discriminations that are entirely arbitrary. In determining what is within the range of discrimination and what is arbitrary,

regard must be had to the particular subject of the State's action. In the present instance the regulations as to the giving of a bond or insurance policy to protect the public generally, in order to be sustained, must be deemed to relate to the public safety.

"This is a matter of grave concern as the highways become increasingly crowded with motor vehicles and we entertain no doubt of the power of the State to insist upon suitable protection of the public against injury through the operations over the highways of carriers for hire, whether they are common carriers or private carriers. *But in establishing such a regulation there does not appear to be the slightest justification for making a distinction between those carrying for hire farm products, or milk or butter, or fish or oysters, and those who carry for hire bread or sugar, tea or coffee or groceries, in general, or other useful commodity.* So far as the statute was designated to safeguard the public with respect to the highway, we think that the discrimination here made between the private carriers which are relieved of the necessity of obtaining certificates and giving security, and the carrier, such as appellant, was wholly arbitrary and constituted violation of appellant's constitutional rights. Such a classification is not based on anything having relation to the purpose for which it is made."

In the end this case must be decided on the same findings and upon the same principles as was the case of McLeaish versus Binford, 52 Federal Reporter (2nd), 151. That case involved an Act of the Texas Legislature passed at the same session at which this Act was passed. Both enactments were aimed at *uncompressed cotton.* The Three-Judge Court below in the McLeaish case referred to the Act as *"forbidding the use of the highways to uncompressed cotton, and compelling it to be compressed in the interior and hauled to market by rail."*

CONCLUSION.

We submit that for the reasons set forth above if this Court hold Section 5 of the Act invalid, then it should also hold this Section 3 (f) unconstitutional and void; and that even if this Court holds Section 5 of the Act valid, then it should construe Section 7 (5 b) of the Act so as to refer to *uncompressed cotton* as well as to any other commodity.

Respectfully submitted,

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